

In the United States Court of Federal Claims

No. 01-56 C

(Filed: October 21, 2005)

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)	
JOHN W. BULL, ET AL.,)	Fair Labor Standards Act, 29
)	U.S.C. §§ 201-219 (2000);
Plaintiff,)	Trial; Damages; Order for Entry
)	of Judgment under Rule 54(b)
v.)	
)	
THE UNITED STATES,)	
)	
Defendant.)	
_____)	

David L. Kern, El Paso, TX, for plaintiffs. Mark Louis Greenwald, San Antonio, TX, of counsel.

Christian J. Moran, with whom were Peter D. Keisler, Assistant Attorney General, David M. Cohen, Director, and Mark A. Melnick, Assistant Director, United States Department of Justice, Civil Division, Commercial Litigation Branch, Washington, DC, for defendant. Robert Humphries and Christopher J. Duncan, Department of Homeland Security, United States Customs and Border Protection, El Paso, TX, of counsel.

ORDER

Before the court are the parties' filings of October 18, 2005 pursuant to orders of the court dated September 27, 2005 (9/27/05 Opinion or Op.) and October 14, 2005 directing the parties to work together to stipulate to damages calculations in this matter.

The parties agree on damages calculations for four plaintiffs, Messrs. Kruzel, Leuth, Stuble, and Bailey.¹ Compare Defendant's Calculation of Damages (Def.'s Calc.)

¹The parties appear to disagree as to the calculation of damages for Mr. Bailey, compare
(continued...)

at 2 with Plaintiff's Submission of Damages per Court's Orders (Pls.' Calc.) at 1. The parties also appear to agree on damages calculations for Mr. Rivera, compare Def.'s Calc. at 2 with Pls.' Calc. at 1, but defendant argues that the apparently agreed-upon calculation is inconsistent with testimony in this case, Def.'s Calc. at 4 (citing Tr. at 535-537) (Bailey, acknowledging that he does not "intend to be claiming any time between June 19, 2004, and July 10, 2004"), and provides an alternative amount that, defendant claims, is consistent with this testimony. Def.'s Calc. at 4 ("If the Court were to eliminate compensation for these four weeks, Mr. Rivera's claim would be decreased by \$331.39, for a base amount of \$17,399.79. When liquidated damages are included, Mr. Rivera's total would be \$34,799.58."). The court agrees with defendant on this point. Accordingly, the court awards Mr. Rivera \$34,799.58.

The parties disagree on damages for Ms. Monistrol. Compare Def.'s Calc. at 2 (stating \$51,539.52) with Pls.' Calc. at 1 (stating \$52,959.64). Plaintiffs calculate Ms. Monistrol's claims through July 31, 2004. Pls.' Calc. Exhibit (Ex.) D at 7; Def.'s Calc. at 5. In contrast, defendant argues that, consistent with the court's statement in its 9/27/05 Opinion that it "will consider plaintiffs' claims for compensation only until the date that the Jacksta Memo was promulgated at their respective [port of entries]," Def.'s Calc. at 5 (quoting Op. at 58), and Ms. Monistrol's testimony that she received the Jacksta Memo on or about July 3, 2004, Op. at 37 (citing Tr. at 415-18), "the United States should not be required to compensate Ms. Monistrol for allegedly performing activities after July 3, 2005," Def.'s Calc. at 6. The court agrees with defendant. However, after discussing with the parties the "additional disparity of \$141.96," Pls.' Calc. at 3, between the parties' measure of Ms. Monistrol's damages after accounting for plaintiffs' addition of four weeks, the court concludes that Ms. Monistrol's damages total \$25,911.72.²

¹(...continued)

Pls.' Calc. at 1 (stating \$46,318.64) with Def.'s Calc. at 2 (stating \$46,388.84), but plaintiffs' filing expresses "confiden[ce] that their damages calculations are correct and accordingly [p]laintiffs will accept the lesser figure of \$46,318.64 for Mr. Bailey" Pls. Calc. at 2. The court notes that the discrepancy between the parties' damages calculation for Mr. Bailey exists because "[t]he United States included compensation for Mr. Bailey for the week ending April 5, 2003 . . . [, while] [p]laintiffs stopped Mr. Bailey's calculation one week earlier [on March 29, 2003]." Def.'s Calc. at 4. Because plaintiffs do not seek compensation for any day after March 29 and they "accept the lesser figure," Pls.' Calc. at 2, the court awards Mr. Bailey \$46,318.64, including liquidated damages.

²This total was determined by subtracting \$568.10, the amount of damages Ms. Monistrol would have received for the additional four week period proposed by plaintiffs, see Pls.' Calc. at 3; Def.'s Calc. at 5, from plaintiffs' determination of Ms. Monistrol's total damages. See Pls.' (continued...)

For the foregoing reasons, and because there is no good reason for delay, the Clerk of the Court shall ENTER FINAL JUDGMENT pursuant to Rule 54(b) of the Rules of the Court of Federal Claims for the following plaintiffs in the following amounts:

<u>Plaintiff</u>	<u>Damages</u>	<u>Liquidated Damages</u>	<u>Total Damages</u>
Mr. Bailey:	\$23,159.32	\$23,159.32	\$46,318.64
Mr. Kruzel:	\$40,618.66	\$40,618.66	\$81,237.32
Mr. Leuth:	\$18,841.96	\$18,841.96	\$37,683.92
Mr. Stuble:	\$17,813.52	\$17,813.52	\$35,627.04
Mr. Rivera:	\$17,399.79	\$17,399.79	\$34,799.58
Ms. Monistrol:	\$25,911.72	\$25,911.72	\$51,823.44

The proceeding with respect to all remaining plaintiffs shall be STAYED pending future orders of the court.

IT IS SO ORDERED.

EMILY C. HEWITT
Judge

²(...continued)
Calc. Ex. D at 7 (stating \$26,479.82). This total does not include liquidated damages. In an informal telephonic status conference held on October 20, 2005, the parties agreed with the court's suggestion that the difference of \$141.96 likely reflected a calculation error.